

1 UNITED STATES BANKRUPTCY COURT
2 CENTRAL DISTRICT OF CALIFORNIA
3 RIVERSIDE DIVISION

4 In re:) Case No. RS 03-17174 PC
5 JEFFREY THOMAS BINDNER and) Chapter 7
6 UTE ROSALINDE BINDNER,)
7) Date: June 20, 2005
8) Time: 9:30 a.m.
9) Place: U.S. Bankruptcy Court
Debtor(s).) Courtroom 303
3420 Twelfth Street
Riverside, CA 92501

10 *At the above captioned date and time, the court considered the Objection to Claim No. 11*
11 *of Bonnie A. Hensel filed May 20, 2005. The following is the text of the court's final ruling*
12 *which is attached to the minutes of the hearing. Because the court has determined that the*
13 *disposition constitutes a "reasoned explanation" for the court's decision within the scope of the*
14 *E-Government Act of 2002, the final ruling is posted to the court's Internet site,*
15 *www.cacb.uscourts.gov, in a text-searchable format as required by the act. The official record*
16 *remains with the minutes of the hearing.*

17 **FINAL RULING**

18 Steven M. Speier, chapter 7 trustee ("Trustee") objects to Claim # 11 - a Proof of Claim
19 in the amount of \$49,000 filed by Bonnie A. Hensel ("Hensel") dated January 3, 2005, pursuant
20 to Fed. R. Bankr. P. 3007 and L.B.R. 3007-1. Claim # 11 purports to be a secured claim for
21 damages for an alleged breach of contract occurring on or about March 10, 2003. Hensel has
22 filed a response in opposition to the objection.

23 The objection is sustained. A proof of claim is deemed allowed unless a party in interest
24 objects under § 502(a). Absent an objection, a proof of claim constitutes *prima facie* evidence of
25 the validity and amount of the claim under Fed. R. Bankr. P. 3001(f). Lundell v. Anchor Constr.
26 Specialists, Inc., 223 F.3d 1035, 1039 (9th Cir. 2000). The filing of an objection to a proof of
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1 claim "creates a dispute which is a contested matter" within the meaning of Fed. R. Bankr. P.
2 9014 and must be resolved after notice and opportunity for hearing upon a motion for relief. *Id.*

3 When a creditor has filed a proof of claim that complies with the rules, thereby giving
4 rise to the presumption of validity, the burden shifts to the objecting party who must "present
5 evidence to overcome the prima facie case." United States v. Offord Fin., Inc. (In re Medina),
6 205 B.R. 216, 222 (9th Cir. BAP 1996). To defeat the claim, the objector must come forward
7 with sufficient evidence and "show facts tending to defeat the claim by probative force equal to
8 that of the allegations of the proofs of claim themselves." Lundell, 223 F.3d at 1039, *quoting In*
9 *re Holm*, 931 F.2d 620, 623 (9th Cir. 1991). "The objector must produce evidence which, if
10 believed, would refute at least one of the allegations that is essential to the claim's legal
11 sufficiency." Lundell, 223 F.3d at 1040, *quoting In re Allegheny Int'l, Inc.*, 954 F.2d 167, 173-
12 74 (3d Cir. 1992). If the objector produces sufficient evidence to negate one or more of the
13 sworn facts in the proof of claim, the burden reverts to the claimant to prove the validity of the
14 claim by a preponderance of the evidence. Ashford v. Consol. Pioneer Mort. (In re Consol.
15 Pioneer Mort.), 178 B.R. 222, 226 (9th Cir. BAP 1995), *aff'd*, 91 F.3d 151 (9th Cir. 1996), *quoting*
16 Allegheny Int'l, 954 F.2d at 173-74. The ultimate burden of persuasion remains at all times on
17 the claimant. Lundell, 223 F.3d at 1039; Holm, 931 F.2d at 623.

18 In this case, the court entered an Order Approving Compromise of Controversy between
19 Steven M. Speier, Chapter 7 Trustee, and Bonnie Ann Hensel on June 17, 2004, which approved
20 a Compromise Agreement between the Trustee and Hensel dated May 11, 2004, attached as
21 Exhibit A to the order. Paragraph 32 of the Compromise Agreement states: "No Allowed
22 Claims. Ms. Hensel shall not have any allowed claim or allowed administrative claim in the
23 Debtors' pending Chapter 7 case." [Compromise, p.9]. By the terms of the compromise, Hensel
24 waived her claim against the estate.

25 In her response, Hensel claims that she signed the compromise under duress. However,
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1 Hensel has not sought relief from this court's order approving the compromise nor offered a
2 declaration or other evidence in support of her allegation of duress.

3 Accordingly, the objection is sustained and Claim # 11 is disallowed in its entirety.
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